

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Civ. No. 14-mc-50 (PAM/JSM)

Petitioner,

REPORT AND RECOMMENDATION

v.

BRADLEY C. SCHULTZ,

Respondent.

This matter is before the Court on the United State of America's Petition to Enforce Internal Revenue Service ("IRS") Summons Issued to Respondent Bradley C. Schultz [Docket No. 1]. Bahram Samie, Esq. appeared on the Government's behalf. Bradley C. Schultz appeared pro se. This matter has been referred to the undersigned Magistrate Judge for a Report and Recommendation by the District Court pursuant to 28 U.S.C. §636(b)(1)(A), (B), Local Rule 72.1.

For the reasons stated below, the Court recommends that the Petition be granted.

I. BACKGROUND

IRS Officer Mathew A. Fox is investigating the federal income tax liability of Schultz for the tax years 2007-2012. Declaration of Matthew A. Fox ("Fox Decl.") ¶2. [Docket No. 2]. On May 9, 2014, Fox issued and served an administrative summons directing Schultz to appear on June 4, 2014, to testify and produce for examination all documents and records regarding income received from 2007-2012. Id. ¶4; Petition, Exhibit, p. 1 [Docket No. 1-1] (summons).¹ Schultz appeared on June 4, 2014, but did

¹ Although Fox referred to exhibits in his declaration, the exhibits were not attached. The exhibits were attached to the Petition, but not numbered. As a result, the

not provide any of the requested information, prompting the IRS to send a “last chance” letter instructing Schultz to appear and comply with the summons on July 16, 2014. Id., ¶¶ 6, 7; Petition, Exhibit, p. 4 (letter from IRS to Schultz dated June 23, 2014). Schultz failed to appear in response to the letter, prompting the United States to commence this action. Id., ¶ 8.

On August 26, 2014, this Court issued an Order to Show Cause, directing Schultz to appear on October 6, 2014, and show cause why he should not be compelled to obey the summons. [Docket No. 3]. Schultz was personally served copies of the Order to Show Cause, Petition, Fox Declaration, and exhibits on September 5, 2014. Return of Service [Docket No. 4]. Schultz did not respond in writing to the Order to Show Cause, but did appear at the hearing and did not object to enforcement of the summons. In fact, he informed the Court of his intent to comply with the summons on or before November 3, 2014. This Court directed counsel for the United States to inform the Court no later than November 5, 2014, regarding Schultz’s compliance with the IRS Summons. On November 5, 2014, counsel for the United States notified the Court that Schultz had still not complied with the summons.

I. DISCUSSION

Before enforcing a summons issued by the IRS, a court must find that the summons (1) was issued for a legitimate purpose, (2) targets information relevant to that purpose, (3) requests information not already in the IRS’s possession, and (4) satisfies all administrative steps under the Internal Revenue Code. United States v. Powell, 379 U.S. 48, 57-58 (1964).

Court will refer to the page numbers of the exhibits assigned through the electronic filing system.

At the hearing, Schultz did not contest the summons on any of the Powell grounds and instead expressed his desire to comply. However, even if Schultz had objected, Fox's declaration established that the Powell requirements were satisfied. The summons was issued for the legitimate purpose of investigating the federal income tax liability of Schultz. The books, records, papers, and other requested documents and testimony are relevant to that purpose. The IRS has not obtained the documents or information through other means. Lastly, Fox was authorized to issue the summonses, and there is no indication that the summonses do not comply with all administrative requirements.

II. RECOMMENDATION

The IRS summons was issued for a legitimate purpose, sought relevant information, and requested information the IRS does not already possess. Furthermore, the IRS has fulfilled all administrative requirements.

Accordingly, based on the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

The United States of America's Petition to Enforce Internal Revenue Summons [Doc. No. 1] be **GRANTED** and that Respondent be Ordered to obey every requirement of the IRS summons issued on May 9, 2014.

Dated: November 7, 2014

Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

NOTICE

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **November 21, 2014**, a writing that specifically identifies those portions of this Report to which objections are made and the basis of those objections. A party may respond to the objecting party's brief within ten days after service thereof. All briefs filed under this Rule shall be limited to 3500 words. A judge shall make a de novo determination of those portions to which objection is made. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable directly to the Circuit Court of Appeals.